

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 2 July 2020 at 2.00 pm.



Neutral Citation Number: [2020] EWHC 1745 (Ch)

Case No: BR-2018-001090

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF JURAID ANWER
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

7 Rolls Building
Fetter Lane
London, EC4 1NL

Date: 2 July 2020

Before :

THE HONOURABLE MR JUSTICE ZACAROLI

Between :

CENTRAL BRIDGING LOANS LIMITED

Applicant

- and -

MR JURAID MOHAMMED ANWER

Respondent

Ms Dawn McCambley (instructed by **Shakespeare Martineau**) for the **Applicant**

Mr Juraid Anwer (the **Respondent**) appeared in person

Hearing date: 26 June 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE ZACAROLI

Mr Justice Zacaroli:

1. This is an application by Central Bridging Loans Limited (“CBL”) for an extended civil restraint order (“ECRO”) or, in the alternative, a limited civil restraint order (“LCRO”) against the respondent (“Mr Anwer”).
2. The application is made within proceedings commenced by Mr Anwer in July 2018 to set aside a statutory demand served on him by CBL (the “insolvency proceedings”), but also concerns related proceedings in the County Court at Central London involving the same parties (the “County Court proceedings”).

Background

3. In 2015, CBL made two short-term bridging loans totalling £2,150,000 to Mr Anwer and his former wife. The Loans were secured against their home by way of second and third legal charges.
4. Mr and Mrs Anwer defaulted on the repayment of the Loans and possession proceedings were issued in May 2016. A warrant of possession was executed by CBL in November 2016 and CBL then marketed the Property for sale.
5. On 5 December 2017, Mr Anwer, obtained an urgent without notice interim injunction in the Brentford County Court, restraining the sale of the property. His underlying claim (set out in the witness statement in support of the application for an injunction) was, in essence, that CBL had fraudulently delayed selling the property, such that over time the property had reduced substantially in value while the interest payable by him and his former wife under the loans had correspondingly increased.
6. The Property was sold for £2.75 million in January 2018. CBL claimed that a shortfall was due of some £2 million under the loans and issued statutory demands dated 8 May 2018 against the Anwers.
7. In July 2018, Mr Anwer applied to have those demands set aside on the grounds that the debt was disputed (there was a parallel application made by Mrs Anwer, but I am concerned only with the applications that have been made by Mr Anwer).
8. Shortly before the hearing of the set-aside application, in March 2019 Mr Anwer commenced the County Court proceedings seeking an order under s140B of the Consumer Credit Act 1974 and claiming the sum of over £2.7 million plus interest as against CBL. The basis of his claim was essentially the same as that contained in his witness statement for the injunction application in December 2017, namely that CBL had purposefully delayed the sale of the London Property in a fraudulent scheme to maximise the amount of interest accruing under the Loans.

9. On 28 March 2019 ICCJ Burton acceded to an application by Mr Anwer that the set-aside application be adjourned pending the determination of the County Court proceedings. Neither the County Court proceedings nor the set-aside application has yet been determined.
10. The application for an ECRO is based upon a number of applications made by Mr Anwer in the course of the insolvency proceedings and the County Court proceedings.

The Law

11. The power to make a civil restraint order is contained in CPR Rule 3.11 and practice direction 3C made pursuant to it. By paragraph 2.1 of the practice direction, an LCRO may be made “where a party has made 2 or more applications which are totally without merit”. An LCRO restrains a party from making any further applications in the proceedings in which the order was made without obtaining the permission of a judge identified in the order.
12. By paragraph 3.1 of the practice direction, an ECRO may be made “where a party has persistently issued claims or made applications which are totally without merit”. Where the ECRO is made by a High Court Judge, it restrains the party from issuing claims or making applications in the High Court or County Court “...concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of the judge identified in the order.”
13. A claim or application is totally without merit “...if it is bound to fail in the sense that there is no rational basis on which it could succeed ... It need not be abusive, made in bad faith or supported by false evidence or documents in order to be totally without merit, but if it is, that will reinforce the case for a civil restraint order”: *Ghassemian Hamila Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225, per Males LJ at [27] (“*Tigris*”).
14. “Persistence” in this context requires at least three applications that were made totally without merit: *CFC 26 Ltd v Brown Shipley & Co Ltd* [2017] EWHC 1594 (Ch) per Newey J, approved by Males LJ in *Tigris* at [28]. The test is not a merely numerical one, however. Three such claims or applications are the minimum required for making an ECRO, but in each case the question is whether the party concerned is acting persistently: “That will require an evaluation of the party’s overall conduct. It may be easier to conclude that a party is persistently issuing claims or applications which are totally without merit if it seeks repeatedly to litigate issues which have been decided than if there are three or more unrelated applications many years apart. The latter situation would not necessarily constitute persistence” (see *Tigris* at [30]).
15. When considering whether a party has made claims or applications that were totally without merit, the court is not confined to those instances where a court has certified them as such. It may also take into account any previous claims or applications that it concludes were totally without merit, provided that it is satisfied that it knows sufficient about the previous claim or application (see *Tigris* at [37]).

16. In so doing, however, the court should not substitute its own views for those of the judge who heard the previous claim or application: see *Courtman (Trustee in Bankruptcy) v Ludlam* [2009] EWHC 2067 (Ch), per Edward Bartley Jones QC sitting as a deputy High Court judge at [11]. At [13] of that judgment, the deputy judge commented that the most important factor in the exercise of discretion is the ‘threat level’ of continued issue of wholly unmeritorious claims or applications, noting that the mischief is not merely the unnecessary troubling of opponents but also the draining of court resources. It was no answer that a party is prompted to make applications by a genuine and honest sense of grievance: “the only relevance of an honest belief in the validity of the unmeritorious claims which are being brought is that it may *increase* the ‘threat level’ of future unmeritorious litigation. The question to be asked, quite simply, is will the litigant, now, continue with an irrational refusal to take ‘no’ for an answer”.

Applications certified as totally without merit

17. Prior to the hearing of this application Mr Anwer had made three applications that were certified as being totally without merit.

(1) Order of Birss J dated 11 December 2019

18. At a costs and case management conference on 4 September 2019 in the County Court proceedings, HHJ Backhouse gave permission to CBL to file and serve an amended defence and gave permission to CBL to obtain from the court documents relating to Mr Anwer’s application for help with court fees.
19. On 21 October 2019, Mr Anwer filed an appellant’s notice seeking permission to appeal the order of HHJ Backhouse.
20. On 11 December 2019 Birss J refused permission to appeal, certifying that the application was totally without merit. Mr Anwer’s opposition to CBL’s application to amend its defence was based on his contention that CBL had falsely claimed that the claim form in the County Court proceedings had been served on it on 28 March 2019, thus giving it only 14 days to file a defence. One of the reasons advanced by CBL in support of its application to amend was that it had produced its original defence under pressure of time and that, with the benefit of greater time, it was able to plead more fully to the claim.
21. HHJ Backhouse had rejected Mr Anwer’s opposition as irrelevant in circumstances where he could identify no prejudice as a result of the amendments. Birss J, in refusing permission to appeal, noted that there was no suggestion of prejudice in Mr Anwer’s grounds of appeal or skeleton argument and that the basis advanced for the appeal was “hopeless”. He considered the appeal in relation to the application for access to the court file equally hopeless.
22. In light of his conclusion that the appeal was totally without merit, Birss J ordered that Mr Anwer could not request that the decision be reconsidered at a hearing and that it was not subject to review or appeal.

23. There are two matters relating to this application which I mention here, but will return to when considering Mr Anwer's conduct more broadly.
24. The first is that, in his appellant's notice, Mr Anwer also sought an order that CBL and its solicitor be "sanctioned by the court for breaches of CPR 81 section VI and CPR 39.9". This was a serious allegation that CBL and its solicitor were in contempt of court in that they had knowingly made a false statement to the court (as to the length of time CBL had to prepare its defence). In light of his refusal of permission to appeal, it was unnecessary for Birss J to make any order on this part of Mr Anwer's application.
25. The second is that, in his witness statement and skeleton argument for this application Mr Anwer requested the court to withdraw Birss J's conclusion that the application for permission to appeal was totally without merit, to overturn HHJ Backhouse's decision to permit CBL to amend its defence and to find three directors of CBL and its solicitor to be in contempt of court for making false statements to the court. It is clearly not open to Mr Anwer to seek to reopen any of these matters, in view of the terms of Birss J's order referred to at paragraph 20 above.

(2) Mr Anwer's application dated 7 October 2019 to commit CBL's directors and solicitor to prison for contempt

26. On 7 October 2019, Mr Anwer brought committal proceedings against three directors of CBL and two partners in the firm of solicitors representing it. There were numerous procedural defects in that application, including that Mr Anwer had not sought permission to bring it. At the hearing of the application on 25 March 2020, I treated it as an application for permission to bring committal proceedings and, in a judgment dated 30 March 2020 ([2020] EWHC 765 (Ch)), I dismissed that application. I concluded that the application was totally without merit, referring to the allegations made by Mr Anwer variously as groundless, pure speculation and falling very far short of reaching the threshold for the grant of permission.
27. Mr Anwer contends that this application cannot be counted as one of three or more 'totally without merit' applications necessary to merit an ECRO, because my order concluding that it was totally without merit post-dated the issue of the application for an ECRO. I disagree, for three reasons. First, the essential requirement is that the court is satisfied that the party has persistently made applications found to be totally without merit. That is an issue to be judged as at the date of the hearing of the application for an ECRO. As a matter of principle, provided the respondent has had an opportunity to address the point, I do not think that the court should be prevented from having regard to conduct which demonstrates the necessary degree of persistence on the ground that it post-dates the issue of the application for the ECRO. Second, in any event the question for the court is whether the *application* for committal was one that was made totally without merit. That is a question which (as I have indicated above) the court is entitled to consider even if another court has not already certified the application as being totally without merit. The committal application was issued long before the application for an ECRO. Third, when concluding, on 30 March 2020, that the committal application was made

totally without merit it would have been incumbent on me to consider whether to make a restraint order: see Practice Direction 3C, paragraph 1. The only reason that I did not do so on that occasion was because there was already in existence an application for an ECRO, upon which I gave directions for the service of evidence.

28. Additionally, Mr Anwer submitted that I should not take into account my decision on the contempt application because he had sought permission to appeal from the Court of Appeal and had identified eight errors of law in that decision. I would have rejected that submission on the basis that it was proper to have regard to the decision unless and until it was overturned by the Court of Appeal. It so happened, however, that during the hearing of CBL's application for an ECRO notification was received from the Court of Appeal (Lewison LJ) that Mr Anwer's application for permission to appeal had been dismissed and certified as totally without merit.

(3) Application for specific disclosure dated 30 March 2020

29. In the autumn of 2019 CBL had intended to issue an application to strike out the County Court proceedings and to apply for a stay of various matters, including disclosure obligations, in the meantime. Upon discovering, however, that a strike out application could only be listed after the window for the trial in the County Court proceedings, it withdrew its application. Having missed the deadline for disclosure, CBL applied for relief from sanctions.
30. In the meantime, however, Mr Anwer issued a further committal application on 27 January 2020 against three directors of CBL for making a false disclosure statement. In the evidence in support of his application, Mr Anwer set out seven broad categories of disclosure which he contended CBL ought to have provided.
31. At a hearing on 23 March 2020 HHJ Backhouse granted CBL relief from sanctions. Mr Anwer was invited by CBL to withdraw this further committal application. He agreed to do so but only if CBL provided all of the extensive disclosure which he had claimed within the committal application. On 30 March 2020 Mr Anwer issued an application for specific disclosure which sought essentially the same classes of documents. That application was dismissed on 15 May 2020 by HHJ Backhouse. She recorded in her order that the application was totally without merit.
32. The committal application made on 27 January 2020 was subsequently withdrawn by consent, CBL having offered to Mr Anwer that it be withdrawn on the basis that costs would be in the case.
33. Mr Anwer submitted that his specific disclosure application could not be taken into account because it, and the order of HHJ Backhouse certifying it as totally without merit, post-dated the application for an ECRO. I reject that submission, for the first of the reasons I have given when rejecting the similar submission in relation to the committal application of 7 October 2019: the court is entitled to take into account applications made at any time prior to the time the court considers the application for an ECRO if it considers they were

made (or such applications have been certified as being made) totally without merit.

Other applications made totally without merit

34. CBL relies, in addition to the three occasions when a court has certified an application made by him as totally without merit, on the following additional matters.
35. First, on 13 September 2019 Mr Anwer made a second application to set aside the statutory demand, on the basis that the debt was disputed on substantial grounds.
36. In answer to the contention that this was the same basis as his first set-aside application, and was therefore an attempt to circumvent the order of ICCJ Burton adjourning consideration of the set-aside application until after trial in the County Court proceedings, Mr Anwer submitted that the second application was different because it relied on specific parts of the Insolvency Rules 1986. He said that he had become aware of these rules since the adjournment order of ICCJ Burton.
37. I do not accept that the basis of the second application was any different from the first. The reference to the Insolvency Rules did not add anything of substance since, as Mr Anwer acknowledged, his first application had also been based on the contention that the debt was disputed.
38. The second set-aside application caused significant additional work and cost for CBL. It came before deputy ICCJ Schaffer on 26 November 2019, when he ordered that it be dealt with, if at all, together with the first set-aside application. He commented that it involved duplicity of proceedings, was disproportionate and a waste of resource, saying to Mr Anwer: “you cannot keep on asking the same question over and over again.”
39. In my judgment, this is an example of an application that was totally without merit. There was no rational basis on which a second application for the same relief could succeed when the first application had been adjourned, at Mr Anwer’s request, to await the outcome of the County Court proceedings.
40. Second, I consider that the committal application issued by Mr Anwer on 27 January 2020 referred to at paragraph 30 above was also totally without merit. There was no rational basis on which an application to commit directors of CBL to prison for a false statement in a disclosure statement could succeed when (as HHJ Backhouse found) the specific disclosure application for the same documents was itself made totally without merit.
41. Third, I consider that it is also appropriate to take into account further requests for relief by Mr Anwer in his evidence and skeleton argument served in relation to this application for an ECRO. I have already referred to his request that I overturn the order of HHJ Backhouse of 4 September 2019 granting CBL permission to amend its defence, and the order of Birss J of 11 December 2019 refusing permission to appeal that order, and that I commit CBL’s

directors and solicitors to prison for making a false statement to the court in relation to that application. In addition, he requested that the order of ICCJ Burton dated 28 March 2019, adjourning his first application to set aside the statutory demand, be set aside and that the statutory demand itself be set aside. This is, in effect, a third application to set aside the statutory demand.

42. These requests were not contained in a formal application to the court. I do not think that precludes them from being taken into account in considering whether to make an ECRO. Making repeated, albeit informal, requests for relief which a court has already refused upon formal application, demonstrates an inability to take 'no' for an answer as much as if the later requests were made by formal application.
43. Fourth, I consider that the further committal application made in Mr Anwer's appellant's notice against the decision of HHJ Backhouse dated 4 September 2019 (see paragraph 24 above) was also totally without merit. This follows in part from the conclusion that the application for permission was itself dismissed as totally without merit. In any event, I consider there was no rational basis on which an application to commit CBL's directors and solicitors to prison could have succeeded. It was based on an assertion that CBL and its solicitors lied in stating that the claim form had been served on 28 March 2019, so that the defence was filed only 14 days later. The photographs contained in Mr Anwer's skeleton of the relevant court documents show that the claim form in the County Court proceedings was not issued until 22 March 2019 and that it was sent by the Court by first class post on 25 March 2019. While it was deemed to have been served two days later, on 27 March 2019, that is not inconsistent with it having actually been received on 28 March. Mr Anwer's allegation of falsity rested on the fact that he had emailed a copy of the *unissued* claim form to CBL on 14 March 2019. That did not render untrue the statement as to the date upon which the claim form was actually served, which is the event that began time running for the service of a defence. It certainly provided no basis for commencing proceedings to commit CBL's directors or solicitors to prison.

Other claims and applications that were not made totally without merit

44. CBL relied, in addition, on various other claims and applications which it contended were made totally without merit. I find, however, that none of these additional matters were so made.
45. First, in its evidence in support of the application CBL contended that the County Court proceedings and the first application to set aside the statutory demand were made totally without merit. Both of these, however, remain to be determined by a court. The former is listed for trial later this year and the latter is adjourned pending conclusion of the former. For this reason neither was pressed in argument by Ms McCambley, who appeared for CBL. I would have been reluctant in any event to pre-judge the outcome of the trial. As to the first set-aside application, the fact that ICCJ Burton adjourned it pending determination of the County Court proceedings is sufficient, in my judgment, to preclude a conclusion at this stage that it was made totally without merit.

46. Second, CBL relies on two applications issued by Mr Anwer on 31 October 2019. These, as he accepts, duplicate (in one case) the committal application dated 7 October 2019 and (in the other case) the second application to set aside the statutory demand dated 13 September 2019. The only difference is that the applications dated 31 October 2019 were made by application notice within the insolvency proceedings. Mr Anwer explained that he did this because he received an email from the court advising that this was the appropriate form to use for these applications. While I accept that the mere fact of issuing multiple applications for the same relief caused CBL to incur unnecessary time and cost, these are not the type of repeated applications for the same relief that demonstrate a propensity to re-litigate issues or an inability to take ‘no’ for an answer. I do not, therefore, count these as adding to the total number of applications made totally without merit.
47. Third, CBL relies on the application made by Mr Anwer in December 2017 for an injunction. As to this, District Judge Atkin, upon discharging the injunction on 8 December 2017, said that he did not regard Mr Anwer’s application for an injunction as “frivolous”. In light of that, I am not prepared to conclude that the application was totally without merit. Ms McCambley submitted that I could be satisfied that the application was totally without merit because the District Judge concluded that, even if one took Mr Anwer’s case at its highest, “damages must be an adequate remedy”. I disagree: the fact that a judge concludes, having heard an application, that the answer is clear does not mean that the application was totally lacking in merit.

Conclusions on ECRO

48. In summary, I have found that there were seven applications made by Mr Anwer in the period September 2019 to May 2020 that were totally without merit, three of which were certified as such by the relevant judge.
49. In considering whether this amounts to “persistence”, as required by paragraph 3.1 of practice direction 3C, in addition to the relatively small timescale within which these seven applications were made, I take account of two matters in particular. First, these applications include repeated attempts to re-open both the question whether the statutory demands should be set aside, notwithstanding the adjournment of the first set-aside application by ICCJ Burton and the question whether CBL should have permission to amend its defence. Second, there have been four separate occasions when Mr Anwer has sought to commit directors of CBL and/or its solicitors to prison. This has continued notwithstanding comments of deputy ICCJ Jones in December 2019 as to the considerable difficulty such an application faces and my own decision in March 2020 that the one application for committal that was pursued to a hearing was totally without merit.
50. Mr Anwer provided five reasons why the court should not make an ECRO, in addition to his submission that only applications which post-dated the issue of the application for the ECRO could be taken into account.

51. First, he submitted that the percentage of applications he has made which have been found to be totally without merit is very small as compared to all of the applications he has made. Given the findings I have made as to which of his applications were totally without merit, the relevant percentage is substantially higher than that acknowledged by Mr Anwer. In any event, I do not accept that this is the correct approach. The risk of a party continuing to make applications totally without merit is not reduced because that party has also made applications which are not so characterised, particularly where the latter are for relatively minor matters such as an extension of time or for a transcript at public expense.
52. Second, he submitted that because this application was made within the insolvency proceedings, the court was able to take into account, as examples of applications made totally without merit, only those within the insolvency proceedings. I reject that submission. There is nothing in the language of the practice direction to suggest it. The fact that an ECRO, if made by a High Court Judge, precludes applications and claims being issued without permission in the High Court or the County Court, and extends to applications or claims “relating to or touching upon” the proceedings in which the ECRO is made, supports the view that the court may take account, in deciding whether to make the ECRO, of applications made in proceedings other than those in which the application for the ECRO is made.
53. Third, Mr Anwer said that an ECRO would serve no purpose since there was already in place a requirement that applications were dealt with in the County Court proceedings by a single judge, and he did not intend to make any further applications in the insolvency proceedings. It is correct that the County Court proceedings have been docketed to HHJ Backhouse and that all correspondence in relation to the proceedings is to be sent to her. That, however, is not the same as the supervision carried out under an ECRO. HHJ Backhouse is not exercising any control over Mr Anwer’s ability to make applications. The principal difference is that an application issued in the County Court proceedings immediately engages the other parties against whom the application is brought, such that they are required to react to it, incurring time and cost in the process. The docketed judge in the County Court proceedings also has no control over an appeal from an order made by her. Moreover, while it may be true that the insolvency proceedings are effectively stayed pending the outcome of the County Court proceedings, Mr Anwer’s repeated attempts to bypass ICCJ Burton’s order and to set aside the statutory demands shows that that is not in itself a guarantee that no further applications would be made by Mr Anwer.
54. Mr Anwer pointed out that imposing a permission requirement under an ECRO would risk delay and thus prejudice to him in getting any application disposed of in the County Court proceedings. It is true that the requirement to obtain permission can cause delay in an application by Mr Anwer being finally disposed of. That is an inevitable consequence of any ECRO. In a truly urgent case, however, there would be ways of ensuring that his application for permission was dealt with quickly.

55. Fourth, so far as the repeated applications for committal are concerned, Mr Anwer said that he was only doing what the CPR directed him to do. He referred to passages in the White Book indicating the possible consequences of making a false statement to the court. While this explains his conduct it does not objectively reduce the risk of continuing to make unmeritorious applications. An ECRO would have the effect of preventing Mr Anwer making applications that were similarly based on a misunderstanding of the law or procedure. Such applications (particularly involving allegations of contempt of court) inevitably cause respondents to them to react and incur costs. It is worth noting that Mr Anwer would himself benefit from an ECRO to the extent that it prevented such costs being incurred and being awarded against him.
56. Fifth, in relation to the specific disclosure application issued in March 2020, Mr Anwer pointed to the fact that disclosure was provided under one of the seven heads requested. The short answer to this is that HHJ Backhouse nevertheless certified the application as wholly without merit and I do not have adequate materials to review her conclusion, even if it was open to me to do so. In any event, the fact that a party agrees (as here) to provide one item asked for in a list of seven does not mean that the request for the other six had any merit.
57. Finally, Mr Anwer relied on conduct of Mr Clifford, a director of CBL, which he described as harassment and intimidation. He referred, first, to an email sent by Mr Clifford to Mr Anwer on 24 April 2020 calling Mr Anwer a “charlatan” and a “con man”, and indicating an intention to write to numerous people, including the Lord Chancellor and the CEO of HMRC. Second, he referred to Mr Clifford’s aggressive reaction towards a process server when being served with proceedings. Mr Anwer asked the court to restrain Mr Clifford from attempting to intimidate and harass him or those in his employ. While I regard the terms of Mr Clifford’s email as inappropriate, even if induced by exasperation at Mr Anwer’s conduct, I consider that the matters complained of have no relevance to CBL’s application for an ECRO against Mr Anwer. That application is concerned only with the proper characterisation of Mr Anwer’s conduct in making applications total without merit. It is not necessary or appropriate to deal further with Mr Anwer’s request for relief against Mr Clifford in the absence of an application properly made against him (Mr Clifford is not a party to the present application) which identifies the legal basis for making the orders sought.
58. Stepping back from the detail and considering the seven instances of applications that were totally without merit as a whole, I am satisfied that they demonstrate a degree of persistence that justifies the making of an ECRO. The ECRO should specifically relate to applications in the County Court proceedings and the insolvency proceedings. Although separate, these proceedings both relate to the same subject matter. As I have noted, the imposition of a requirement for permission before Mr Anwer is allowed to make applications will not only benefit the respondents to such applications and the court, but will also, potentially at least, benefit Mr Anwer by reducing his exposure to adverse costs orders.

59. I am again grateful to both Ms McCambley and Mr Anwer for their assistance. Mr Anwer presented his case with courtesy and clarity in the challenging circumstances of participating without legal representation, by telephone and with a substantial electronic bundle of documents.